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Lessons from China?: Keeping Divorce Rates Low in the Modern Era

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Lessons from China?: Keeping Divorce Rates Low in the Modern Era

Catherine R. Chyi*

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I. INTRODUCTION

Marge and Homer live in the United States. Their marriage has lasted for over ten years, a roller coaster ride through dating, love, children, and problems. Homer has physically abused their son Bart, and Marge has grown tired of his

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erratic and immature behavior. In the United States, Marge has the ability to file for a divorce any time she chooses, without the need to declare any particular grounds. Marge's divorce will be granted as long as she follows the set procedures of her state. At the court proceeding, any differences between Marge and Homer can be settled by the judge, or by agreement between the couple, and then a judgment of divorce will be granted. The judge does not have discretion over *whether* to grant Marge and Homer a divorce. A judge may only exercise discretion pertaining to the split of the couple's assets and custody of their children, if those issues arise and are not resolved by the couple independently or through mediation.

Rumor has it that fifty percent of all marriages in the United States end in divorce.¹ Whatever the actual percentage really is, the average rate of divorce in the United States is about six times higher than in China.² Historically, the Chinese have a strong social stigma about divorce, and assume that something is wrong with a divorced couple.³ Although divorce rates in China have been rising steadily since the introduction of the 1980 Marriage Law and divorce has become more acceptable, rates remain relatively low compared to Western countries.⁴

Imagine Marge and Homer were instead living and married in Beijing, China. Their marriage is now completely different than if they lived in the United States. Homer often forgets or cannot fulfill his duty as a husband to provide for his family. Marge is again tired of Homer's erratic and abusive behavior after ten years. She seeks divorce on the ground of a "breakdown of mutual affection."⁵ Though this is a valid ground for divorce,⁶ the process is vastly different than if Marge and Homer were living in the United States. In China, Moe the mediator is called into action, and whether the couple is inclined to participate in mediation or not, they will be forced to try and resolve their situation and remain married for the sake of societal stability.⁷ After some intense mediation, Marge and Homer will ideally decide that they can work out their differences, and happily return to their home, cognizant of their reciprocal needs and duties to each other.

1. Dan Hurley, *Divorce Rate: It's Not as High as You Think*, N.Y. TIMES, Apr. 19, 2005, http://www.nytimes.com/2005/04/19/health/19divo.html?_r=1&scp=1&sq=Divorce%20Rate:%20It%27s%20Not%20as%20High%20as%20You%20Think&st=cse (pointing out the flaw in the calculation of the statistic that lead to the common belief that one in two marriages end in divorce; in reality the highest the divorce rate has ever been was 41%).

2. See *People Statistics: Divorce Rates*, NATIONMASTER.COM, http://www.nationmaster.com/graph/peo_div_rat-people-divorce-rate (last visited Jan. 31, 2011) [hereinafter *People Statistics*] (listing divorce rate by country. The United States is ranked number one, with a rate of 4.95 divorces per 1,000 people, and China is ranked number seventeen, with a rate of 0.79 divorces per 1,000 people).

3. Martha J. Bailey, *Mediation of Divorce in China*, 8 CAN. J.L. & SOC'Y 45, 59 (1993).

4. See *id.* at 58 (noting that the divorce rate increase has caused concern and that the rate is low relative to Western countries).

5. Michael Palmer, *The Re-emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction*, in CHINA'S LEGAL REFORMS 110, 123 (Stanley Lubman ed., 1996).

6. *Id.*

7. See Bailey, *supra* note 3, at 56.

One of the major differences between China's divorce laws and the United States' divorce laws occurs in the stages before the couple reaches adjudication. In China, mediation is often required, and the country is equipped with several million mediators for their population of about 1.14 billion people.⁸ Generally, a couple is allowed to utilize the courts only after a consensus cannot be reached through mediation techniques.⁹ After reaching the court, the judge may also decide that it is necessary for the couple to pursue additional mediation and will ultimately decide whether or not to grant the request for divorce.¹⁰

This Comment will discuss the benefits of the Chinese approach to divorce, especially in the area of mediation, and the prospect of learning different methods and approaches to divorce from the Chinese system. Of course, there are always flaws and differences in the practical application of law as opposed to the theory of the law, and China is not exempt from this norm. This Comment does not seek to show that the law in China is necessarily "better" than the law in the United States, but will take an analytical approach to finding strategies and ideas from the Chinese method that can be implemented to improve societal and familial stability in the United States. The focus will be on the ideas that are promulgated from the more recent Marriage Law of China in 1980.

Part II will give a detailed background on the history of marriage laws in both China and the United States. Discussions of important Chinese historical periods include pre-Communist China, the 1950 Marriage Law to 1980, and the 1980 Marriage Law to the present. Differences in the United States' methods in recognizing and adjudicating divorce, before and after the 1970s, will also be discussed.

Part III will further explain common approaches to divorce proceedings in the United States. This Comment will use California law as a template. The purpose of this is because California was the first state to enact no-fault divorce proceedings, which have been subsequently enacted in all the states.¹¹ For convenience, California laws on marriage and divorce will be utilized. This part will then analyze the differences between the idealistic rights that the Chinese Marriage Laws give to couples and the practical day-to-day application and outcomes of divorce petitions. Part III will compare the divorce statistics between the two countries and discuss their global rankings in terms of divorce rate.

8. See *id.* at 53, 58.

9. See Xin He, *Routinization of Divorce Law Practice in China: Institutional Constraints' Influence on Judicial Behavior*, 23 INT'L J.L. POL'Y & FAM. 83, 86 (2009) ("[I]f mediation efforts prove futile, the judge may or may not grant a divorce.").

10. *Id.*

11. MARGARET C. JASPER, *MARRIAGE AND DIVORCE* 9 (3d ed. 2008); Carlyn Kolker & Patricia Hurtado, *Divorce Easier as New York Law Ends Need to Lie*, BLOOMBERG (Aug. 16, 2010 6:48 AM), <http://www.bloomberg.com/news/2010-08-16/breaking-up-not-so-hard-to-do-as-new-york-s-divorce-law-ends-need-to-lie.html> [hereinafter *NY Divorce*] (reporting that New York became the last state to enact no-fault divorce legislation).

Finally, Part III will discuss the impacts of high divorce rates and the incentive for a nation to minimize these rates.

This Comment will conclude with a recommendation that the United States explore into implementation of methods to expand mediation practices in divorce proceedings. Though China's laws in practice do not necessarily adhere to the personal freedoms that are particularly valued in the United States, its laws can still provide an example of an approach taken by a large, populated, and powerful country when facing a serious societal issue. The fact that China is a large country and has kept divorce rates much lower than the United States should provide, at the very least, workable ideas the United States government could implement to find alleviation to the problem of high divorce rates in the United States.

II. BACKGROUND

A. *United States*

Early in United States history, the Church generally dictated marriage and divorce proceedings.¹² The Protestant Church only recognized divorce in limited circumstances: the fault grounds of adultery and malicious desertion.¹³ If fault were established under one of the limited grounds, only the innocent party could remarry.¹⁴ Throughout the nineteenth century, divorce in the United States still operated on fault grounds, but the grounds were broadened to other unsavory acts in a marriage, with adultery remaining as one of the grounds.¹⁵ Prior to the 1970s, the law only allowed for the court to grant divorce based on an act deemed to break up the marriage by one of the spouses.¹⁶ Couples would be forced to remain in a marriage even though the marriage was "dead."¹⁷

In 1970, shortly before the passage of the Uniform Marriage and Divorce Act (UMDA), California enacted the first no-fault divorce law in the United States.¹⁸ The UMDA has not been adopted by a majority of the states, but it promotes the trends of no-fault divorce and equitable distribution of property.¹⁹ All states have

12. See JASPER, *supra* note 11, at 19.

13. *Id.* at 20.

14. *Id.*

15. *Id.*

16. See *id.* at 19-20 (noting that the institution of marriage was ecclesiastical in nature and thus heavily limited by the Protestant church. Couples were granted divorce on very limited bases, namely, fault grounds of adultery or malicious desertion).

17. *Warguleski v. Warguleski*, 435 N.Y.S.2d 857, 859 (1981).

18. JASPER, *supra* note 11, at 8-9.

19. *Id.*

now adopted no-fault divorce statutes, following the trend promoted by the UMDA and enacted by California.²⁰

California's current statutory provisions provide that a divorce can be based on two grounds: irreconcilable differences and incurable insanity.²¹ The definition of irreconcilable differences given in the statute instructs for ". . . those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved."²² Incurable insanity has a much narrower definition, since it must be proven that a spouse was insane at the time the petition was filed and that the insanity remains incurable.²³

While some states still retain the traditional common law fault grounds of divorce,²⁴ all states also have similar no-fault grounds for divorce.²⁵ Generally, the laws of the states recognize a no-fault ground of "irreconcilable differences" or "irretrievable breakdown" as sufficient grounds for a divorce.²⁶ In addition, the declaration of "irreconcilable differences" need not be consensual.²⁷ Only one spouse needs to declare that the spousal differences have become so detrimental that it qualifies as "irreconcilable."²⁸ Following the passage of no-fault divorce statutes, couples were free to initiate divorce proceedings because they were not happy with the marriage.²⁹ Dictating specific grounds to the court were unnecessary as long as one of the spouses decided that the marriage had become "irreconcilable."³⁰

As the law started to change in 1970, so did the attitude surrounding the concept of divorce. The broadened grounds for divorce allowed for couples to shift their focus of marriage.³¹ Instead of the traditional faithfulness to the marriage contract, the couples now strived to attain individual satisfaction.³² Thus, if one spouse as an individual was not satisfied, a divorce proceeding could be initiated, which must be done by preparing and filing a Summons and

20. *Id.* at 9; *NY Divorce*, *supra* note 11.

21. CAL. FAM. CODE § 2310 (West, Westlaw through 2009 Reg. Sess.).

22. *Id.* § 2311.

23. *Id.* § 2312.

24. See generally DANIEL SITARZ, *DIVORCE AND DISSOLUTION OF MARRIAGE LAWS OF THE UNITED STATES* (1990) (giving a summary of laws relating to divorce in all the states and District of Columbia, including each jurisdiction's grounds for dissolution of marriage).

25. KARLA B. HACKSTAFF, *MARRIAGE IN A CULTURE OF DIVORCE* 28 (1999); *NY Divorce*, *supra* note 11.

26. HACKSTAFF, *supra* note 25 at 28-29.

27. *Id.* at 29.

28. *Id.*

29. *Id.*

30. See JASPER, *supra* note 11, at 20 (noting that no-fault grounds for divorce shifted the emphasis from finding fault to finding out whether the marriage could succeed, and that irreconcilable differences emerged as a no-fault cause for divorce).

31. *Id.*

32. HACKSTAFF, *supra* note 25, at 29.

complaint for divorce with the court.³³ Courts will only adjudicate a divorce if the grounds for the divorce are based on the state statute.³⁴ If the grounds are not prescribed by the statute, then a divorce cannot be granted.³⁵ Participation in mediation, or conciliation, remains an option and can be requested by one or both of the parties; however, it is not required in California,³⁶ and not required in most states.³⁷

Conciliation became common starting in the 1960s when there was a dramatic increase in the rate of divorce in the United States.³⁸ The increase in divorce also raised concerns about the effects of divorce on families and on children in particular.³⁹ The legal side of divorce proceedings makes divorce an adversarial process.⁴⁰ Each side has legal representation, in a struggle to resolve a personal situation that often involves the couple's children.⁴¹ Additionally, legal procedures are generally very slow and costly, thus placing a large financial burden in addition to the enormous emotional cost of divorce.⁴² In contrast, entering into the marriage is not adversarial, nor is it perceived as a legal process though technically, it is a legal act.⁴³

Concerned by the effects divorce had on families—and especially the children in these families—the federal government funded a grant aimed at addressing the effects divorce had on families and their children and created the Association of Family and Conciliation Courts (AFC).⁴⁴ The goal of the AFC was to study mediation in the United States, and an annual conference was held starting in 1981.⁴⁵ This concern about the effects of divorce led to studies and more interest in the mediation process, but has not been particularly supported by the legal community as a positive feature of the divorce process.⁴⁶ The general criticism of divorce mediation is that the process is only concerned with “getting it done,” rather than “getting it right.”⁴⁷ Practicing attorneys are suspicious of the

33. JASPER, *supra* note 11, at 29.

34. Rocconi v. Rocconi, 196 S.W.3d 499, 502 (Ark. Ct. App. 2004) (citing Poore v. Poore, 61 S.W.3d 912, 914 (2001)).

35. *See id.*

36. CAL. FAM. CODE § 1831 (West, Westlaw through 2009 Reg. Sess.).

37. *See generally* SITARZ, *supra* note 24 (describing the mediation laws in the state surrounding divorce).

38. LENARD MARLOW & S. RICHARD SAUBER, THE HANDBOOK OF DIVORCE MEDIATION 3 (1990).

39. *Id.*

40. *Id.* at 4.

41. *Id.* at 3-4.

42. *Id.* at 4.

43. *See id.* at 11 (noting that couples rarely consult an attorney before or during their marriage, but that one of the initial suggestions at the first sign of divorce is to seek legal counsel).

44. *Id.* at 4.

45. *Id.*

46. *Id.* at 5.

47. *Id.*

mediation process because it cuts into the lucrative practice of divorce attorneys.⁴⁸ Attorneys who attempt to assist their clients in the mediation process are potentially liable because of their conflict of interest.⁴⁹ The couple can go through mediation with a mental health professional, but this technique also has shortcomings because these professionals may be charged with involvement in the unauthorized practice of law.⁵⁰

In addition to being under fire about their credentials and actions during a proceeding, divorce mediators accepted the overall assumptions and goals already in place legally.⁵¹ The goal for divorce mediators already in place was to obtain a divorce instead of attempting to resolve the dispute.⁵² The question was simply *how* the mediator intended to get the couple to divorce.⁵³ Mediation has continued as a method to obtain a divorce, although critics have expressed that mediation does not protect the conflicting interests of the parties, or sufficiently inform the parties of their legal rights, like the adversarial system does.⁵⁴ There is also concern for the lack of standardization and fairness in the process.⁵⁵

Divorce in the United States has evolved since the time when the church dictated the process to a form that gives spouses much more freedom. The only justification necessary is one spouse's assertion that the marriage has become so unhealthy that no turning back is possible, and no other means of saving the relationship exist. Notice the emphasis on individuality instead of on the marriage.

An objective description of Marge and Homer's marriage is that Marge is unhappy with Homer's actions in the marriage, and is tired of dealing with his erratic and abusive behavior towards her and Bart. When Marge decides to file for a divorce in the United States, she will tell the court that there are irreconcilable differences between her and Homer. It is her determination, and her determination alone, that is necessary and sufficient for a divorce judgment to be granted.

Homer could have absolutely no idea that Marge is unhappy. Homer could have a different side to the story. Homer may want to apologize, start over, and try and repair his marriage with Marge. He may not be ready for such a life changing event. But so long as Marge has decided that the marriage is irreconcilable, Marge has the right to obtain a divorce from Homer.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *See id.* at 4-5 (noting that divorce mediation did not question *where* to lead a couple but only how to get them there, in regards to mediation adopting and accepting the assumptions and goals laid out by the legal profession).

53. *Id.*

54. *Id.*

55. *Id.*

B. China

The act of divorce in China was traditionally thought of in a shameful light because it involved litigation.⁵⁶ Confucian values were historically adhered to in China, and maintained that litigation was a disruption to natural harmony and a “shameless concern for one’s own interest to the detriment of the interests of society.”⁵⁷ Because of the disapproval by society and the common practice by wealthy men to obtain concubines, divorce was a rarity in China before the twentieth century.⁵⁸ In the rare instances when divorce was sought, the possibilities differed depending on whether the request was mutual.⁵⁹ If husband and wife both wanted to separate, divorce was possible.⁶⁰ However, this issue of mutuality was usually decided solely by the husband’s side of the family.⁶¹

In particular, a husband could divorce his wife on seven grounds: “disobedience to the husband’s parents, barrenness, adultery, jealousy, incurable disease, loquacity, and theft”⁶² However, if the wife had no close relatives to return to, had mourned the husband’s parents for three years, or if the husband’s family had become wealthy since the marriage, these constituted exceptions to a ground for divorce.⁶³

The 1920s gave rise to a Communist developed mediation system that was promoted as a better method of resolving disputes.⁶⁴ Law reform began at the end of the nineteenth century that granted equality in civil, political, and property rights to women in 1931.⁶⁵ The 1950 Marriage Law enacted permissive divorce by mutual consent into law; however, if only one spouse desired divorce, the law required mediation.⁶⁶ In actuality, the couple was still required by practice to go to mediation even if both parties wanted a divorce and the 1950 Marriage Law granted this right.⁶⁷

The difference between the 1950 Marriage Law and traditional practice was that there were no specific grounds for divorce in the 1950 Marriage Law,⁶⁸

56. Bailey, *supra* note 3, at 48.

57. *Id.*

58. *Id.* at 49.

59. See Xiaqing Feng, *A Review of the Development of Marriage Law in the People’s Republic of China*, 79 U. DET. MERCY L. REV. 331, 371 (2002).

60. See *id.* (noting that the court will not render a divorce if there is still mutual affection, but the court shall render a divorce where the couple has no mutual affection).

61. Bailey, *supra* note 3, at 49.

62. *Id.*

63. *Id.*

64. *Id.* at 51.

65. *Id.* at 49.

66. LI FENGJIN: HOW THE NEW MARRIAGE LAW HELPED CHINESE WOMEN STAND UP 38 (Susan Glosser ed. & trans., Opal Mogus Books, 2005) (1950) [hereinafter LI FENGJIN].

67. Bailey, *supra* note 3, at 53.

68. See LI FENGJIN, *supra* note 66, at 38-39 (divorce is covered under Articles 17, 18, and 19 of the

whereas traditional practice in the Qing dynasty (1644-1912)⁶⁹ provided seven grounds for a husband to divorce his wife.⁷⁰ The 1950 Marriage Law never became widely known because it was never publicized to its fullest, but the government policy at least shifted from relieving subordination of wives to preserving families for the purpose of increasing social stability.⁷¹

Couples who could not reconcile through mediation would proceed to court where further attempts to reconcile through court mediation were made.⁷² The court vigorously investigated the alleged breakdowns in affection through interviews with the couples' families, friends, neighbors, and co-workers.⁷³ Applications for divorce could be denied on the basis of a court's opinion that there was still an emotional basis for the marriage and that the couple should work things out.⁷⁴

Later in the twentieth century, China began to institute significant social reforms to pursue the goal of social stability.⁷⁵ Mediation was incorporated into the Chinese constitution as the primary method to maintain social order and served as a channel for the population to voice their grievances and suggestions to the government.⁷⁶ In 1980, another new marriage law was enacted, and this one was made widely known to the public.⁷⁷

The 1980 Marriage Law had a less stringent policy on divorce and provided a legal right to speedy divorce for couples who were in agreement, as long as their property distribution and child custody issues had been resolved.⁷⁸ The new law also imposed a duty on couples to practice family planning.⁷⁹ For couples that did not agree, there were no specific grounds for divorce; but later in 1989, the court introduced fourteen circumstances under which a divorce should be granted.⁸⁰ These included "adultery, bigamy, impotence, nonconsummation, an incurable mental disorder, and a hasty marriage."⁸¹ The new law also provided that if only one party applied for a divorce, the court should try to reconcile the parties, but if there was complete alienation of mutual affection, a divorce should be granted.⁸²

1950 Marriage Law, but none of these sections state grounds for divorce other than mutual consent).

69. Bailey, *supra* note 3, at 48.

70. *Id.* at 49.

71. *Id.* at 54-55.

72. *Id.* at 56.

73. *Id.* at 56-57.

74. *Id.* at 57.

75. *Id.*

76. *Id.* at 57-58.

77. *Id.* at 58.

78. *Id.*

79. *Id.* at 64.

80. *Id.* at 56, 65-66.

81. *Id.*

82. *Id.* at 58.

Child custody is also covered under the 1980 Marriage Law.⁸³ Both parents are required under the law to be responsible for their child after divorce.⁸⁴ After infancy, the duty is on the parents to agree to an arrangement of custody.⁸⁵ If the parents cannot meet this duty, the court is instructed to award custody consistent with the rights and interests of the child and the parents' circumstances.⁸⁶ In the unlikely occurrence that the child was breast-fed as an infant, the mother obtains custody of the child.⁸⁷ The mother also obtains custody of a child under the age of one unless there is another reason not to allow for that custody arrangement.⁸⁸

The laws and policies regarding divorce in China have also come a long way since the Qing dynasty, mostly due to efforts made by the Communist government.⁸⁹ It appears that the government has expanded women's rights and freedoms of divorce,⁹⁰ but these expanded rights are still subject to the last word of the government.⁹¹ China's focus centers on society, even if it means sacrificing individuality. The notion that "government knows best" is at the heart of the government, noticeable from the way requests for divorce are handled. Requests are just that, and the government is not required to grant an application.

Efforts have been made to liberalize proceedings, but the fact that the government retains control over whether or not to grant a divorce shows the tremendous power that the government has on the everyday lives of Chinese citizens. It is much easier in modern Chinese culture to obtain a divorce, compared to before the passage of the 1950 Marriage Law, but still fairly difficult compared to Western cultures like the United States.⁹² The result is that families are kept more intact in China.⁹³

III. ANALYSIS

A. *Procedures in the United States*

Obtaining a divorce in the United States is not overly complicated. State law governs divorce proceedings, and the parties to a divorce must meet a list of

83. *Id.* at 64.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* (the majority of infants in China are not breast-fed).

88. *Id.*

89. See generally LI FENGJIN, *supra* note 66, at xii-xiv (detailing the history of Chinese reform leading up to the New Marriage Law in 1950).

90. *Id.* at xi.

91. Bailey, *supra* note 3, at 66 (guidelines for granting a divorce are not binding on judges).

92. *Id.* at 58.

93. See *infra* Part III E.1.

requirements and then follow certain steps to obtain their divorce.⁹⁴ To initiate a divorce, a Summons and Complaint for divorce needs to be prepared.⁹⁵ Hiring an attorney is not necessary to initiate or obtain a divorce judgment, especially if the divorce is uncontested.⁹⁶ An uncontested divorce can result if the parties consent to the divorce, or if one party fails to appear or answer the complaint in the divorce action.⁹⁷

The Summons and Complaint communicates the grounds for divorce and requests relief, and also gives notice to the defendant that their spouse (the plaintiff) is requesting a divorce.⁹⁸ Filing the Summons and Complaint incurs filing fees with the court, with exceptions for indigent persons.⁹⁹ After the Summons and Complaint have been filed, the defendant typically must be served with the papers, generally by a person who is over eighteen years of age.¹⁰⁰

If the defendant does not contest the divorce, then generally no response or appearance is necessary, and a default judgment will be granted and entered upon submission of all the appropriate forms to the court.¹⁰¹ However, if there are other issues regarding the custody or visitation of children or distribution of property, then a hearing may be required before judgment is granted, and if the divorce is contested, the defendant must answer the complaint and serve that answer on the plaintiff.¹⁰² The proceeding can become much more complicated than the uncontested divorce, and the court will determine and settle issues of child custody and support, property distribution, and, if necessary, spousal maintenance.¹⁰³

Revisiting Marge and Homer's marriage, recall Marge's continued frustration with Homer's lack of maturity, lack of responsibility, and abuse of their son. Marge's decision to initiate a divorce proceeding is independent. If Homer also feels that the marriage has failed and will not contest the proceeding, then Marge can obtain a divorce fairly quickly. Since Marge and Homer have a child, the issue of Bart's custody and support may complicate and extend the process, though the court can settle this matter. Clearly, the more complicated divorces are ones that are contested, which raise potential problems between a view of divorce as a legal event as opposed to a personal event.

94. JASPER, *supra* note 11, at 28.

95. *Id.* at 29.

96. *Id.*

97. *Id.* at 24.

98. *Id.* at 29.

99. *Id.*

100. *Id.*

101. *Id.* at 30.

102. *Id.*

103. *See id.* (noting that the parties are advised to retain attorneys in a contested divorce).

1. *Assumptions—Divorce as a Legal Event*

Divorce in the United States has traditionally been viewed as a legal event as opposed to a personal event.¹⁰⁴ In *The Handbook of Divorce Mediation*, written by Lenard Marlow and S. Richard Sauber, the authors cite five generally accepted assumptions regarding the traditional understanding of divorce.¹⁰⁵ The first is that divorce is a legal event, which the state has a significant interest in and therefore, the right to control.¹⁰⁶ While marriage is freely granted as long as the minimal requirements such as age are met, the state has determined that there is a greater interest in divorce and does not freely grant it.¹⁰⁷ A couple's right to divorce depends on whether the state grants them this privilege.¹⁰⁸ The couple in a divorce proceeding is required to demonstrate that the divorce is legally justified, which can be done by showing the court that the spouses are incompatible.¹⁰⁹

The second assumption that society has about divorce is that the marriage's failure and thereafter divorce is caused by the misconduct of one of the spouses.¹¹⁰ The traditional understanding of divorce in the past was that a divorce proceeding would not be able to be carried out unless it could be proven that one of the parties had engaged in marital misconduct.¹¹¹ This high standard resulted in an exaggerated effort to prove the guilt of one party solely to obtain an adjudication of divorce and sever the marriage.¹¹² Even though modern divorce statutes have liberalized the act of divorce and expanded the grounds for which a divorce can be granted, the idea of divorce still centers around the premise that one of the spouses engaged in marital misconduct.¹¹³ This thought is still prevalent in societal views of divorce, which in turn gives rise to the idea that divorce is utilized to "right th[e] wrongs" committed by the guilty party.¹¹⁴

Third, the rights and obligations of the respective parties in their marriage are defined by law.¹¹⁵ The purpose of the judicial process is to define those roles as well as adjudicate the couple's divorce.¹¹⁶ The fourth assumption is that each party in a divorce has adverse and conflicting interests.¹¹⁷ Since the assumption is

104. See MARLOW & SAUBER, *supra* note 38, at 6 (noting that adversarial divorce proceedings operate on certain assumptions through which society has traditionally viewed divorce).

105. *Id.* at 6-7.

106. *Id.* at 6.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* (emphasis omitted).

115. *Id.*

116. *Id.*

117. *Id.*

made that each spouse will be adversarial to the other, the presumed purpose of the judicial process is to settle a dispute between the parties.¹¹⁸ This explains why divorce disputes are so difficult to resolve and how the United States judicial system views divorces: that the conflicts in interest are standing in the way of a resolution.¹¹⁹

Finally, the fifth assumption of society is that each of the party's interest needs to be protected by the law.¹²⁰ The function of law is to define and protect each of the spouse's rights.¹²¹ This can be done through the judicial process and separate attorney representation.¹²²

2. Assumptions—Divorce as a Personal Event

In contrast to the traditional view of divorce as a legal event, the authors of *The Handbook of Divorce Mediation* view divorce as a personal event, and argue that a less adversarial process (mediation) may be just as effective—if not more effective—in accomplishing the same result.¹²³ There are ten assumptions that underlie the personal event view.¹²⁴

The first shift in view is that divorce is a personal decision, but with legal implications.¹²⁵ Mediation views on marriage and divorce do not comply with the idea that these events are legal events simply because they are regulated by the state.¹²⁶ Secondly, the view through the eyes of mediation is that both the couple involved in the divorce proceeding and their immediate family are in a “state of crisis.”¹²⁷ This means that the life structures of each and every family member have been threatened as well as the social constructs that the family members rely on to give their lives meaning.¹²⁸ This “state of crisis” is the framework that should be the overarching governance as to how to engage in mediation.¹²⁹

It is also extremely important that the couple reaches a psychological divorce in addition to a legal divorce.¹³⁰ This is because divorce is one of the most stressful experiences for most people.¹³¹ To ensure that the couple can continue

118. *Id.*

119. *Id.*

120. *Id.* at 6-7.

121. *Id.* at 7.

122. See *id.* (noting that the cornerstone of the protection of each party's rights is the judicial process and representation by separate attorneys).

123. *Id.*

124. *Id.* at 8-9.

125. *Id.* at 8.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

and move forward in their lives, it is crucial for the couple to put their bad feelings aside, achieving a psychological divorce.¹³²

A critical observation must be made that a divorce is a legal action that does not provide any kind of solution to a couple's problems in their marriage or their dispute.¹³³ The only "answer" is one that is imposed on the couple, so the couple should not be encouraged to believe that adjudication is an "answer" to their personal disputes.¹³⁴ Thus, Marlow and Sauber stress that it is the *couple* that must make the ultimate determination as to what is appropriate or inappropriate in their lives.¹³⁵ If mediation is utilized, a mediator should be viewed as a guest invited to help, not to judge.¹³⁶

In most situations, the couple will necessarily have an ongoing relationship, even after the divorce, especially if they have children.¹³⁷ This means that a divorce ends the marriage, but not the family unit.¹³⁸ Therefore, a resolution between the couple necessitates that it be done in a way that enables the couple to conduct business with each other in the future of their ongoing relationship after the divorce.¹³⁹ Also, in most situations, couples have interests in common, but the legal profession tends to ignore the common interests and focus on the conflicting interests.¹⁴⁰

In contrast to the legal view that the couple cannot come to a conclusion between themselves because of their conflicting interests, mediation views the couple's feelings of disappointment, hurt, and fear as what is preventing the couple from their own agreement in the situation.¹⁴¹ The mediation view requires that the procedures used to resolve the conflict should address destructive feelings instead of exacerbating these feelings, which occurs in traditional adversarial divorce proceedings.¹⁴²

Mediation recognizes that divorce is not an event to assign blame or praise, and rejects the idea that individual elements can be singled out as the cause of divorce.¹⁴³ Any attempt to single out a cause is pointless and improper because it causes the couple to look backward instead of looking forward.¹⁴⁴ Finally, it is important to recognize that divorce is not an event to right any wrongs of the

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 8-9.

140. *Id.* at 9.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

marriage.¹⁴⁵ The legal system, which encourages parties to expect that divorce will right any kind of wrong, is misguided, and adds another impediment to the emotional closure that is necessary at the end of the divorce proceeding.¹⁴⁶

3. The Role of Mediation in the United States

Divorce can be achieved in an adversarial or cooperative manner in the United States. Using mediation as a medium is the cooperative manner.¹⁴⁷ The Academy of Family Mediators accredits individuals as mediators based on their experience and training.¹⁴⁸ The criteria includes a minimum of forty hours of mediation training, a review of agreements from at least fifteen successful mediations, and documentation from an experienced mediator that the individual is qualified as a mediator.¹⁴⁹

Divorces can be fully mediated, which means that all the issues including custody, visitation, property, and finances can be settled through mediation.¹⁵⁰ Alternatively, divorce sometimes necessitates only partial mediation on a couple of issues.¹⁵¹ After an agreement is reached through mediation, each party takes the agreement to their respective attorney (if they have one), but the court must still accept the agreement before a divorce is granted.¹⁵²

B. Procedures in China

Marge has decided, as before, that she is completely and totally fed up with Homer's behavior and attitude in the marriage. She feels alone in attempts to keep the family alive and no longer has the strength to stay married to her husband of ten years. In the past couple of months she has felt torn between making an independent decision and making a decision based on community expectations.

China views divorce as a selfish act that should be avoided at all costs to promote social stability.¹⁵³ To support China's rehabilitation theory in an attempt to create social order instead of promulgating chaos, the investment in mediators is key. Mediation committees are simply subcommittees of the neighborhood,

145. *Id.*

146. *Id.*

147. MARC J. ACKERMAN & ANDREW W. KANE, *PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS* 223 (4th ed. 2005).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 224.

153. Bailey, *supra* note 3, at 59.

disbanded during the Cultural Revolution and then reformed in 1978.¹⁵⁴ Mediation, in addition to resolving conflicts and disputes, is also used by the Chinese government as a political form to generate support for the Communist Party.¹⁵⁵ Because divorce is viewed as breeding social instability, mediation is emphasized and given priority in order to reform and encourage couples not to be selfish in pursuing their legal rights, but rather remain married to fulfill their social duties.¹⁵⁶ Mediators in China have a very interventionist approach, making avoidance of mediation difficult.¹⁵⁷

The ratio of population to mediators is a little less than 190:1.¹⁵⁸ In a household of three (husband, wife, and one child), this means that there is one mediator for approximately every 61 households. The goal for the Ministry of Justice is to eventually provide one mediator for every ten households.¹⁵⁹ The majority of employed mediators are retired women.¹⁶⁰ This may be reflective of the sought after qualities in a mediator, such as being “patient, talkative, and warm-hearted.”¹⁶¹

In 1989, there were 700,000 documented cases of divorce applications.¹⁶² There are two approaches to obtain a divorce in China: divorce at registry and divorce through action.¹⁶³ If both parties agree and want to file for a divorce, and can also agree on their issues of child custody, and property disposition, divorce certificates must be issued and the relationship dissolved.¹⁶⁴ Divorce through action is a lawsuit brought to the people’s court in the defendant’s domicile.¹⁶⁵ Here, because only one party desires the divorce, the mediation committee will be conducting mediation before the party files for divorce at court.¹⁶⁶ After the couple goes through mediation, the result will be one of three outcomes.¹⁶⁷

The first outcome is that through mediation, the couple becomes amicable and can reconcile and abandon their request for divorce.¹⁶⁸ Another result from mediation is that the couple will reach a settlement regarding what to do with

154. *Id.* at 52.

155. *Id.*

156. *Id.* at 59.

157. *Id.* at 60.

158. *Id.*

159. *Id.*

160. *Id.* at 67.

161. *Id.* at 66.

162. *Id.* at 58.

163. JANET LEACH RICHARDS ET AL., PRACTICAL GLOBAL FAMILY LAW, UNITED STATES, CHINA, AND ITALY 49 (2009).

164. *Id.*

165. *Id.* at 50.

166. *Id.* at 70.

167. *Id.*

168. *Id.*

their property, their child, and their debts.¹⁶⁹ If the second outcome happens, then the parties can go to the marriage registration office and apply directly for a divorce through the registry method.¹⁷⁰ Finally, the third result is that mediation fails, which is the situation where one spouse is still insisting on a divorce and the other spouse is insisting on staying married.¹⁷¹ Here, the party who still desires to continue with the divorce can apply directly to the people's courts to begin a divorce proceeding.¹⁷²

After applying to the people's courts to being a divorce proceeding, the court itself will render a judgment.¹⁷³ If the court believes that mutual affection no longer exists, the court will grant a divorce.¹⁷⁴ However, if court cannot make this determination, a divorce shall not be granted.¹⁷⁵

C. Mediation, and Mediation

Despite the fact that the two countries use the same two words, the concept is extremely different. In China, the focus on mediation, as discussed above, is to keep the family unit together, and to avoid disgrace and social instability among the people. In the United States, however, the focus is on results. Mediation does not mean *trying to keep the family together*, but rather *trying to reach some sort of compromise for this dreadful situation*.

Interestingly, the concept of "divorce" has caused concern in both Chinese and American culture.¹⁷⁶ While the concern caused in American culture, especially by the mental-health profession, is not quite as extreme as the concern for litigation generally during the Qing dynasty in China, the idea of divorce and divorce proceedings are mainly negative, with thoughts that divorce is extremely complicated, adversarial, and harmful.¹⁷⁷ Alternatively, since divorce rates are so much higher in the United States than to those in China, it could also be argued that divorce is regarded as the "solution" to every problem that arises from marriage. Regardless, it remains that divorce in the United States, though perhaps less restrictive and impeded, is not a promoted or desired event.

Though China and the United States both view divorce negatively, the countries have somewhat opposite interests for the family unit. China would

169. *Id.*

170. *Id.* at 71.

171. *Id.*

172. *Id.*

173. *Id.* at 76.

174. *Id.* at 77.

175. *See id.*

176. *See* MARLOW & SAUBER, *supra* note 38, at 3-4 (noting concerns by the U.S. mental-health profession and the federal government regarding divorce on the families and their children); *see also* Bailey, *supra* note 3, at 48 (explaining that litigation was considered a disruption and was indicative of "shameless concern for one's own interest to the detriment of the interests of society.").

177. *See* MARLOW & SAUBER, *supra* note 38, at 4.

argue that the family unit is so important that every effort possible should be made to keep the unit together for the sake of societal harmony.¹⁷⁸ China would maintain that this is preferable to independent thinking because independent thinking happens at the expense of social order.¹⁷⁹ On the other hand, the United States, built upon individuality and freedom, would likely be much more hesitant to sacrifice independence for the sake of society. If individuality and freedoms were sacrificed, then the very foundation of the country would be undermined.

Right or wrong, better or worse, the result is that higher divorce rates likely trigger a handful of societal problems that the American government must deal with. Looking to China may assist the United States, but perhaps the Chinese government is dealing with the problem before it surfaces. Many of the psychological effects after divorce on the parties, their children, and their relatives may be averted because the family is kept together. However, the Chinese government may be avoiding the post-divorce problems at the expense of suppressed marital problems or family alienation.

Imagine that Marge attempts to get a divorce in China, and after they cannot come to a mediation agreement to stay together, the court still refuses to grant the couple a divorce. Marge has now been forced to stay with her husband Homer, who still neglects his duties to her, and still physically abuses Bart. In addition, now that Homer has “won” because the court has decided that Marge does not have an adequate ground for divorce, Homer treats her even worse than he did before. Marge lives her life upset, depressed, and resentful.

The family unit has successfully been kept together, but at what cost? Will Bart’s childhood necessarily be better because his parents will stay together, even if they despise each other and cannot act civilly towards each other in the same room? Will the fact that this family unit has been “kept together” just be a façade and reinforce the theory that the government knows best, regardless of individual independence and autonomy?

These questions must be addressed before deciding whether it is even worth investigating a change into mediation policies. If the tradeoff of family versus individual autonomy is too high, perhaps society will be just as debilitated, but in a different form or at a different time period (during marriage as opposed to post-divorce). However, if keeping the family unit together more often promotes harmony, order, and psychologically sound individuals, the benefits could be enormous.

178. See Bailey, *supra* note 3, at 48.

179. *Id.*

D. Statistics

1. China

The Chinese government publishes the Law Yearbook of China, which is a detailed listing and analysis of the legal system in China.¹⁸⁰ All of the materials in the Yearbook are provided by the government to assure accuracy and complete authority.¹⁸¹ The Law Yearbook provides detailed statistics for marriage and adoption all over China.¹⁸²

The statistics record 786 marriages per 10,000 couples registered in 2002, and another 7.3 marriages per 10,000 couples that were foreign-related involving Hong Kong, Taiwan, and Macao, for a total rate of 12.2%.¹⁸³ In addition, the registration of divorce that same year was 117.8 per 10,000 couples, and another 60.4 per 10,000 couples that were divorce through Adjudication or Mediation in court, for a total rate of 1.8%.¹⁸⁴

2. Petitions and Granted Divorces in China

The Law Yearbook of China also gives a detailed statistical table regarding the number of civil and commercial cases litigated at the trial level in 2002.¹⁸⁵ Out of the 1,284,415 cases that were accepted that were of marriage or family proceedings, 1,277,516 were tried.¹⁸⁶ Almost half of those that were tried went to mediation, and a little less than a quarter of those cases resulted in a *nol pros*¹⁸⁷ ending.¹⁸⁸

3. Comparative Rankings Around the World

The United States ranks highest among twenty-four countries for a rate of divorce at 4.95 divorces per 1,000 people.¹⁸⁹ China doesn't make the list until much further down at number seventeen, with 0.79 divorces per 1,000 people.¹⁹⁰

180. *Law Yearbook of China*, LAW INFO CHINA, http://www.lawinfochina.com/LawBook/Journal_Info.asp (last visited Feb. 15, 2011).

181. *Id.*

182. THE LAW YEARBOOK OF CHINA, LAW YEARBOOK OF CHINA 670 tbl.5 (2003-2004) [hereinafter YEARBOOK].

183. *Id.*

184. *Id.*

185. *Id.* at 645 tbl.6.

186. *Id.*

187. *Nolle prosequi*, often shortened to *nol pros*, means to abandon (a suit or prosecution) or to have (a case) dismissed by a *nolle prosequi*. Black's Law Dictionary 1147 (9th ed. 2009).

188. YEARBOOK, *supra* note 182 at 645 tbl.6.

189. *People Statistics*, *supra* note 2.

190. *Id.*

The rankings statistics report is published with different parameters; it addresses the number of divorces relative to the entire population, instead of the number of divorces relative to the number of marriages. The overall impression is the same: the United States has far more instances of divorce than China.

A percentage can be calculated using the U.S. Department of Health and Human Services National Vital Statistics Reports.¹⁹¹ This data is taken from 2008, and gives the rates of marriages and divorces from 2006-2008. In 2006, there were 3.7 divorces for every 1,000 people, and 7.3 marriages for every 1,000 people, making the divorce rate about 50.7%.¹⁹² The rate goes down to about 49.3% in 2007, and is about the same in 2008.¹⁹³ This number seems to hover around 50%, which is likely where the rumor of half of the marriages in the United States ending in marriage comes from. However, these statistics are only for a particular year, therefore the comparison of marriage to divorce is dependent on the number of marriages in that given year. The number of marriages also seems to be approximately the same, so the divorce rate appears to be fairly accurate.

E. The Battle Between China and the United States

1. The Butterfly Effect of Divorce

In 2000, a book was published after a 25-year study of how divorce affects families, children, and society.¹⁹⁴ The head author, Judith Wallerstein, and two of her colleagues had embarked on a study of how children of divorced parents were affected long into adulthood by a divorce that occurred in their childhood.¹⁹⁵ This book documents interviews with real children and how they handle their lives after the dissolution of their parents' marriage.¹⁹⁶

Among the many events and situations described in detail, the relationships between mothers and daughters were categorized as "traps".¹⁹⁷ Often if a mother has a hard time absorbing the shock of divorce, the daughter finds that she cannot totally separate emotionally from the mother because she identifies with her mother's pain.¹⁹⁸ Because of this ability to identify with the mother's pain, the

191. U.S. Dep't of Health and Hum. Services., *Births, Marriages, Divorces, and Deaths: Provisional Data for 2008*, NAT'L VITAL STAT. REP. , July 2009, available at http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_19.pdf (last visited Feb. 15, 2011).

192. *See id.*

193. *See id.*

194. *See* JUDITH WALLERSTEIN, JULIA LEWIS & SANDRA BLAKESLEE, *THE UNEXPECTED LEGACY OF DIVORCE: A 25 YEAR LANDMARK STUDY* xxvi-xxvii (2000).

195. *Id.* at xx.

196. *Id.*

197. *Id.* at 283.

198. *Id.*

daughter becomes conflicted in later life, pondering decisions of whether to move away and leave her mother alone, and is afraid to succeed in relationships because that is where her mother failed.¹⁹⁹ The fear that entraps these women is that they will end up hurt, lonely, and miserable, following in their mother's footsteps.²⁰⁰ On the other hand, if she leaves her mother to become independent and pursue her own career, she will be doing exactly what her father did to her mother so many years ago—leaving her mother.²⁰¹

In addition, children of divorced parents are often occupied with their parents' morality.²⁰² The legal concept of no-fault divorce is just that: a solely legal concept not intended to pass moral responsibility on the couple involved in the proceeding.²⁰³ However, as far as children are concerned, the legal theory of "no-fault" is untenable, and they cannot subscribe to this concept even if they do not voice their concern of the situation.²⁰⁴

As a result, a new generation of people has been created; forty percent of the people in Wallertstein's study, who are children of divorced parents, have never married.²⁰⁵ Lisa, one of the women who took part in the study, was compared to her friend Bettina, who grew up with a similar socioeconomic status, except that Bettina's parents did not divorce.²⁰⁶ Lisa and Bettina were very close friends who grew up together and still speak today, but Bettina was able to get married and have happy relationships, whereas at age thirty-one, Lisa had decided that she would not get married.²⁰⁷ Lisa's outlook on life was that if there was no marriage, then there could be no divorce, and no betrayal.²⁰⁸

What is revealing about this study of divorced children as they become adults, is how much divorce affects children and how long the effects last. The main part of this study is quite obviously about the psychological limitations divorce creates for children as they grow up in a society dominated by the term 'divorce', but it shows just how potent legal implications can shift or preserve a society's expectations. Children of divorce are likely to get a divorce themselves.²⁰⁹ And in a culture of divorce, where forty-five percent of first marriages and sixty percent of second marriages end in divorce,²¹⁰ the importance of family has become seemingly minute.

199. *Id.* at 284.

200. *Id.*

201. *Id.*

202. *Id.* at 287.

203. *Id.*

204. *Id.*

205. *Id.* at 289.

206. *Id.* at 290-91.

207. *Id.* at 288-91.

208. *Id.* at 289.

209. *Id.* at 297, 301.

210. *Id.* at 295.

Wallerstein also discusses a conversation she had with a family law judge who wondered whether there might be any promise to a study that insinuated that there might be a divorce gene.²¹¹ Wallerstein argues that the entire system of divorce, concerning courts, parents, attorneys, and mental health workers, are reluctant to pay attention to children during and after divorce proceedings.²¹² This reluctance has evolved into the creation of a society where “people wonder aloud whether the family is about to disappear.”²¹³

The court system has unintentionally created²¹⁴ a society that breeds instability. In the courts’ goals to be efficient in carrying out judgments and decrease litigation time, it has failed to take care of the children who are the very ones who are most affected by this broken transition in their lives. The families that result from this newly created society are fragile and unreliable.²¹⁵ Children receive far less nurturing, protection, and parenting than a few decades ago, and long-term marriages are coming apart at surprising rates.²¹⁶

Parents are educated about the divorce process and its affects, but education opportunities are few, and the curriculum receives high ratings only as a result of its ability to prevent further litigation, not because of its educational content.²¹⁷ Thus, the lack of education and training given to the divorcing party transfers to children and persists, even though there are a disproportionate number of children involved in divorce who are admitted into psychological treatment.²¹⁸ Children of divorced families represent about three-quarters of total children in social agencies for treatment,²¹⁹ and some school districts even have organized groups for children whose parents are going through a divorce.²²⁰

2. What About Personal Freedoms?

Why does it matter if the United States has created this new culture consisting of children from divorced families, families of stepfathers, mothers, and siblings? As a society, divorce is a no-fault proceeding, a legal proceeding, and viewed as one that has only momentary crisis.²²¹ It is assumed that children

211. *Id.* at 294-95.

212. *Id.* at 295.

213. *Id.*

214. *Id.* at 302.

215. *Id.* at 297.

216. *Id.*

217. *Id.* at 302.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

will fully recover once they reach adulthood.²²² And how could the legal proceeding of divorce possibly have influence on society?

In Sacramento, California, a large piece of land operates as the Family Courthouse, where half of the courtrooms are dedicated to divorce proceedings and related issues, and the other half of the court is dedicated to child dependency issues. Consider whether dependency issues would arise as frequently as they do if the family unit was more stable. Perhaps if the family unit really was made more stable through mediation, with a goal of keeping the family together, the government would not have to invest in buildings to house the overwhelming number of these proceedings. It would not be necessary to support nearly as many psychological or counseling provisions for couples and their children. Perhaps society would also be less prone to psychological conditions such as depression, bipolar disorder, and even learning disorders that affect children.

The major point is that this momentary crisis, which society has failed to recognize for what it is—a life altering experience—is much more a cost to society than our society wants to believe. Children of divorced parents are so often overlooked and reluctantly talked to about their parents' situation because parents would prefer to skim over the important details and instead hope and pray that when their children reach adulthood; all the psychological difficulties they experienced growing up will simply disappear. But these parents, and the courts, and American society are all seriously mistaken. Divorce is responsible for a whole host of problems, from childhood to middle-aged adulthood.²²³

Now, assuming this to be true, what does China have to do with anything? The United States continues to dominate the world and exert its influence on other nations. But China is also a growing and developing country, and perhaps even a nation that could offer guidance to the United States. China is by no means perfect, and its policies on human rights, lack of freedom of speech, and restrictions on technology and the internet are far from admirable. The country does, however, offer an insight on keeping the family together—a feature much more important than the capitalistic society of the United States wants to believe.

For example, corporate America is certainly not an ideal environment to strengthen a marriage or a family.²²⁴ Although companies notice that parents need to spend time with their children, they often do not recognize how much stress the workplace causes on relationship and marriage stability.²²⁵ In turn, this leads to fewer conversations about important aspects of marriage,²²⁶ which then leads to

222. *Id.*

223. *See, e.g., id.* at 282-93 (addressing the issues that still affect the children of divorced parents even after they have reached adulthood); *Id.* at 297.

224. *Id.* at 303.

225. *Id.*

226. *Id.*

the alarming divorce rates in the United States. Wallerstein suggests that we look to Western European nations to strengthen marriage and the family.²²⁷ This Comment suggests an approach at the other end of the spectrum of divorce approaches—the approach of the Chinese. Perhaps if the crisis of divorce is intervened into and bookended, change will start to happen, and the United States can again begin to create a new culture—one that breeds stability for children instead of instability; promise, faith in marriage, love, and family instead of fear of betrayal, divorce, and loneliness.

The suggestion to mediate divorce proceedings, in a manner like China's aggressive mediation method, is not without fault and requires careful consideration. As is, China's mediation proceedings are demanding and arguably interfere with personal freedoms. Americans would likely not take to the idea of a neighborhood mediator meddling into their lives and encouraging them to "try again" to save their marriage when they have already tried numerous times without success. Further, the United States is built on personal freedoms, and this type of intrusion may be looked at as a violation of substantive due process.

Any program would have to be established carefully, and supported by research. It will not come at a small price. In fact, divorce is probably the last thing that the government wants to try and "fix" right now, given the state of the current economy. But the power of unity and family cannot be overlooked. China, a country of well over 1.3 billion people, has managed to maintain a relatively low divorce rate compared to many European countries, and especially the United States.²²⁸ Surely this is not solely the product of required mediation, but mediation must be contributing to at least a part of the process. Certainly the way that China is developing and shaping their society also has a lot to do with the societal stigma that comes with divorce, but a largely populated country with such low divorce rates must serve as an example to a much smaller populated country with much higher divorce rates. China must be doing something right, even if we cannot agree with all of its activities or actions.

Divorce proceedings can end in China without a judgment of divorce.²²⁹ The recommendation from a judge, based on a mediator's findings can simply be to go back and try again.²³⁰ It seems akin to children who are trying something new for the first time, like riding a bike. They are taught to try, try, try again, until finally they succeed in transporting themselves on a two-wheeled vehicle that requires knowledge, balance, and focus for operation. Perhaps marriages just need a little bit more confidence from someone with more "wisdom"—a judge is the perfect candidate. If America, as a society, is able to adopt the idea that marriage does not fail when two people give up, maybe marriage will last longer.

227. *Id.*

228. *People Statistics*, *supra* note 2.

229. *He*, *supra* note 9, at 86.

230. *Id.*

Longer marriages will then lead to stable citizens, as children will grow up in a family without the adverse effects of learning emotions such as betrayal, anger, and loneliness at a young age.

The impact of these stable families must be priceless. The emotional toll that children take from divorce has been studied and documented, and nothing suggests that divorce is ever nurturing for a child. In fact, children end up growing up way too fast, often missing out on important life lessons which they then fail to recognize are important when they are older and developing relationships themselves.²³¹ If divorce can be contained and curtailed, then an inadvertently created society of destruction, instability, and crisis can also be curtailed. The future can be hopeful, and can be one where the nation does not have to take on the “head of the family” role to all the lost children.

China may be a country that the United States can look to for a potential solution to the divorce epidemic. With nearly half of the marriages ending in divorce, certainly any small decrease would benefit the general population enormously. From the previous lines of discussion, positive implications must come from a decreased divorce rate in the nation. For every child that does not experience divorce, the more likely they will reach adulthood and engage in stable relationships, instead of experiencing divorce as an adult. In addition, they will also be more likely to hold stable and healthy relationships. The effect is enduring to a long list of people.

Remember that Bart is a child of a family who is likely to divorce in the United States, by current standards. If Bart grew up in a household where there wasn’t abuse or threats of the marriage failing, Bart is directly benefited, since he will more likely learn how to communicate maturely and effectively. Once Bart is an adult, he will be able to engage himself in relationships that are at least generally healthy. This benefits the people with whom he has close encounters and intimate relationships. The result is that the number of benefits multiplies drastically, and this is merely if *one* less child is affected by their parents’ divorce. Imagine the results if ten less children were affected by their parents’ divorce, or 100 less children.

The question remains as to not only how to implement any kind of solution, but what kind of solution to implement. This Comment suggests that a solution be modeled closely to the Chinese system of divorce. Clearly, not everything can be replicated exactly, but the ideas are certainly there to extrapolate from. Although it may be useful to consider programs and incentives for the pre-marriage phase of relationships, this Comment will focus on the post-marriage—how to best decrease the national divorce rate without interfering with peoples’ choice to get married.

231. See WALLERSTEIN ET AL, *supra* note 194, at 297-301.

3. The Plan

Before a couple is allowed to file a civil proceeding with the court, they should be required to attend some kind of session, group discussion, or informational meeting about what they are about to embark on. This pre-filing informational meeting (informational) will educate the couple on the nuts and bolts of a divorce proceeding, what the ending consequences can be, and give the couple an array of options so that they can better formulate an idea as to how they would like to proceed. The family unit should be encouraged and promoted, and any children should also be in attendance. The children don't necessarily need to listen to the educational component with their parents, but it would be a good idea to require attendance of children, even if they sit in a day care type facility for the duration of the session. This would potentially help to ensure that the couple has thought through the process, and they are serious enough to pursue more options. Sessions can come in different types: the couple can attend together, or if the couple is not on good terms, they can attend separate solo sessions. In the case where one spouse does not feel the need to attend so that they can avoid the entire process and perhaps stay married for failure to follow procedure, the court may order the non-complying spouse to attend an informational session, and if several attempts have been unsuccessful, excuse that component for futility reasons.

An informational interview would serve many purposes. First of all, it provides an educational component. It informs the couple who may be contemplating divorce about what the process looks like, feels like, and what it costs. It also forces a couple who is contemplating a divorce proceeding, a breaking of the marriage, to pause for a moment and consider the effects of their actions on their current spouses, and potentially their children. This would make the process not as simple as it currently is, but still straightforward. The goal is not to deter people from initiating divorce actions just to keep the numbers down, but to make sure that people have thought about their actions thoroughly and ensure that a couple makes an informed decision regarding the future of their marriage.

After the informational meeting, the potential divorce proceeding splits into two prongs. The first prong, modeled after the Divorce Registry proceeding of China²³² would grant a couple a divorce, so long as they are in complete agreement over the divorce, and the distribution of their assets, debts, and anything related to any children that are involved.

This would not be the same as an uncontested divorce. The general structure of an uncontested divorce occurs when a petitioner files for a divorce and the other spouse for whatever reason decides not to submit an answer.²³³ The divorce

232. RICHARDS ET AL., *supra* note 194, at 49.

233. JASPER, *supra* note 11, at 24.

can move forward on behalf of only one of the spouses and the entire matter will be settled without considering the other spouse's rights. Effectively, the spouse that did not respond will be deemed to have given the petitioner spouse permission to proceed in whatever manner the petitioner spouse wanted.

This plan would not group uncontested divorce judgments along with fully agreed upon divorce proceedings. The reason for this is to ensure that a divorce granted for a couple that is in full agreement on all matters will be necessarily quicker than any other type because the government would only be granting the couple license to do what they wish with their lives. However, in an uncontested proceeding, the couple is not necessarily in full agreement as to the disposition of their marriage. It could be that one of the spouses is refusing to cooperate or could not be reached. Either way, it would be difficult to tell whether the non-responding spouse fully agreed at all. Since it is important to give both spouses as equal rights as possible, this track will need to be longer. The petitioner spouse could, of course, take steps necessary to ensure that the other spouse cooperated, but a coerced agreement would not adhere with the goal of keeping a family unit together or keeping divorce rates down either.

The second prong that could occur after a petition for divorce is filed is that the couple does not agree on some matter of their pending divorce. If anything, anything at all, is not agreed upon by the spouses, then the spouses will be required to go to mediation, with sessions with mediators that are certificated or trained nationally. National certification and training will ensure uniformity of family values, and the mediators will also be trained to have a goal that supports and promotes the family unit. These goals are not set for any religious, biased, or any other reason than to promote a healthy society in the United States.

A mediator's job is to focus on resolving the issue at hand, which is that a marriage may end. However, instead of concentrating on the best way to end the marriage, mediators will be trained to focus their efforts on assisting the couple to discuss their issues with each other, in an almost therapeutic setting. The mediator should not substitute for any sort of marriage counseling, but will have a firm goal of helping a couple to discuss their differences and how they would like to resolve their issues, and encourage a resolution that does not simply involve ending the marriage. This method will be less interventionist than the Chinese method where the mediators often know the families well and can intrude upon their home more easily,²³⁴ but will still be focused on the task of keeping families intact and stable.

IV. CONCLUSION

The concept of divorce in the United States is not foreign to society, social circles, or families. It has been established that close to fifty percent of marriages

234. Bailey, *supra* note 3, at 69.

end in divorce, whereas only about two percent of marriages in China end in divorce. The United States' divorce rate is *twenty-five times* that of a nation with four times its population. With a divorce rate as high as half of marriages, the United States faces an extremely large burden of mending and healing wounds created in people's lives from the event of divorce. This is not to say that all children are extremely affected by the divorce of their parents and the separation of their family life, but it certainly makes it more likely that a whole host of societal problems will come about because of the breakdown in family.

This Comment serves as only a recommendation, for the United States to look outside their own nation, and look into a nation of extremely low divorce rate to investigate what is being done "right." A decrease of divorce rate to 2% is perhaps too lofty a goal to make, and also likely unwise, but even a decrease of 2%, down to about 48%, would be an extreme improvement in regards to the number of couples splitting up. Assuming that the population is one million married couples, and instead of 50%, or 500,000 of those married couples obtaining a divorce, a 2% decrease would mean that 48%, or 480,000 couples are obtaining divorces. This would mean that 20,000 couples would be staying together instead of breaking up and perhaps engaging in a long, tedious, and often hurtful process. The ultimate point is that the divorce event, though no longer a surprising event in the United States, should not be encouraged because of all the potential consequences to families, especially the children. The United States owes it to its children, and to its citizens, to invest in a process that is likely to simplify their already complex lives, and to support a stable childhood environment so that they can grow into mature and productive adults.